

Finance Bill 2012

Financial Services



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Financial Services Tax Changes

The Budget speech in December described the international financial services industry in Ireland as “one of the great export success stories of the last 20 years”. The Minister announced that he intended “to introduce a package of measures in the Finance Bill to support the continued success of the international funds industry, the corporate treasury sector, the international insurance industry and the aircraft leasing industry”. The Minister has largely delivered on his promises. Certainly the changes to the SARP, the FED, the Group Relief and the R&D tax credit regimes, which are detailed in the Business Tax section of the release, had long been sought by the international financial services industry. The specific changes affecting each of the sectors mentioned by the Minister can be summarized as follows;

International Funds Sector

Periodic reporting by investment undertakings

The Finance Bill introduces new provisions which allow the Revenue Commissioners to make regulations requiring the periodic reporting of certain information by Irish funds, with effect from 1 January 2012. The information that would be reported in relation to certain classes of unit holders

includes the tax reference number and value of units held.

The Finance Bill also removes the grandfathering of certain domestic and international bonds for the purposes of the EU Savings Directive.

Funds re-domiciling to Ireland

Where the Central Bank has authorised an investment fund that has re-domiciled to Ireland from certain offshore centres, the Finance Bill provides that a declaration can be made by the fund stating that the unitholders are non-Irish resident, to ensure that no Irish tax charge arises in respect of such non-residents. To the extent that there are any Irish resident unitholders, these need to be identified in the declaration and tax accounted for, where appropriate, on any payments made to such unitholders.

The Finance Bill makes certain technical amendments to clarify the tax exemption applying to payments made by Irish funds to non-resident investors.

Cross border fund mergers involving Irish funds

The Finance Bill includes new measures confirming that mergers (both inbound and outbound) involving an Irish fund with a fund located in a member state of the EU, EEA or

an OECD country with which Ireland has entered into a double tax agreement will not give rise to a charge to tax in respect of Irish resident investors. Effectively the charge to tax is deferred until the ultimate disposal of the replacement units. The calculation of any future gain on such units is calculated by reference to the cost of the original units.

The Finance Bill also confirms that no charge to Irish tax shall arise on the transfer of units in the formation of certain master/feeder structures.

Stamp Duty Changes (applicable to international funds sector)

The Finance Bill extends the significant exemptions available in respect of collective investment vehicles. The key measures are as follows;

- Introduction of an exemption from Irish stamp duty on the transfer of assets on a merger of an Irish fund into a foreign fund;
- Introduction of an exemption from Irish stamp duty arising where Irish assets transfer on a reorganisation or merger of two foreign funds located in EU/treaty jurisdictions;
- Removal of the charge to Irish stamp duty arising on a transfer of foreign immovable property in exchange for the issue of units/shares in an Irish fund;

- Introduction of an exemption for the transfer of an interest in an Exempt Unit Trust; and
- Introduction of an exemption for the transfer of assets between an exempt unit trust and an investment undertaking.

The Irish funds industry's competitive offering

The Irish funds industry continues to work with the Irish Government to explore new products and new fund structures which could enhance the competitiveness of Ireland's fund offering on the global stage.

Of particular importance are the ongoing discussions regarding the introduction of a new corporate structure, which may elect to be treated as tax transparent in certain jurisdictions. Furthermore, the anticipated future introduction of Irish real estate funds and an enhanced regime governing investment limited partnerships shows Ireland's commitment to continue to evolve as a leading global funds domicile.

Corporate Treasury Sector

The corporate treasury sector had long been looking for changes to facilitate international cash pooling operations. Under a typical cashpool arrangement, interest payments by the Irish cashpool leader constitute "short" interest for tax purposes because of the short term nature of these arrangements. Prior to the introduction of the Finance Bill, an interest payment by an Irish cashpool leader to a "group" company (75% or more direct or indirect relationship) resident outside the EU in a country with which Ireland does not have a double tax treaty was deemed to be a dividend for tax purposes. There were two tax

consequences of this. Firstly this interest is not deductible for corporation tax purposes giving rise to an Irish tax cost of 12.5%. Secondly dividend withholding tax (DWT) at a rate of 20% may apply although there are a number of exemptions from DWT which may be relevant depending on the specific circumstances.

The Finance Bill has introduced a relieving provision effective for accounting periods ending on or after 1 January 2012 in respect of short interest. Essentially the Irish company will be entitled to a tax deduction for the interest payable to any group company resident outside the EU in a non-treaty country provided the recipient country taxes foreign interest income at a rate equal to, or greater than the Irish corporate rate. If the recipient country taxes foreign interest at a rate of less than 12.5%, then relief will be given in Ireland at that effective tax rate. If the recipient country exempts foreign interest then no relief will be available in Ireland. This welcome change will affect not only cash pooling operations but all forms of short term lending (i.e. less than 1 year).

Changes have also been introduced into the foreign tax crediting rules on trading interest received under deduction of withholding tax from non treaty countries.

Insurance Sector

Despite the Minister's Budget statement there are few amendments which are specific to the insurance sector. Relevant changes include an increase of 3% in exit tax rates on life policies, an increase in health insurance levies and a change to due dates for the payment of the non-life insurance premium levy. The

Finance Bill puts the exemption from exit tax in respect of exempt approved pension schemes, approved retirement funds and approved minimum retirement funds on a legislative footing.

The insurance sector sought changes to align the Irish and foreign basis of taxation of foreign branches of Irish resident companies. This issue is of particular relevance to the insurance industry given the success of Ireland as a headquarter location for pan European (re)insurance operations. Such alignment should result in no loss of revenue to the Irish Exchequer and would make the calculation of double tax relief in respect of foreign branch profits less onerous. The Finance Bill does not however provide for changes in this area but, given the nature of the change required, it is possible that the matter could be dealt with by way of a statement of practice.

The due date for payment of the non life levy to Revenue has changed from the 30th of the month following the end of each quarter to the 25th of the month following the end of each quarter. The health insurance levy, introduced by the Health Insurance (Miscellaneous Provisions) Act 2009 and payable by health insurance providers, will increase from €66 to €95 for insured persons aged under 18 and from €205 to €285 for insured persons aged 18 and over. This increase applies to relevant health insurance contracts renewed or entered into on or after 1 January 2012. From 1 January 2013 the levy will be an annual levy payable on 21 September in respect of the period ending 31 July.

Aircraft Leasing Sector

The aircraft leasing sector had lobbied hard for personal tax changes so the new SARP and FED regimes provided for in the Finance Bill will be particularly welcome. Also on the wish list was the introduction of unilateral credit relief where withholding taxes were suffered on lease rental payments from countries that Ireland do not have a tax treaty with and the Finance Bill introduces this with effect from 1 January 2012.

Green IFSC

Further positive changes have been made to facilitate the development of the Green IFSC. The range of carbon offsets that a Section 110 company can acquire has been extended to include forest carbon credits. Clarification is also expected shortly from Revenue in relation to the tax treatment of carbon credit trading activity in Ireland.

Banking Sector

There were very few changes specifically affecting the banking sector. The Finance Bill confirms the increase in the rates of DIRT, as well as the tax rates that apply to payments received (including deemed payments) by Irish residents from Irish and offshore life assurance policies and investment funds for payments made on or after 1 January 2012. The rates have increased by 3% from 27% and 30% to 30% and 33% respectively.

On the property side it was a surprise to find that there were no provisions in the Finance Bill that deal with the tax treatment of receivers as this has been creating significant practical difficulties in the market place. We

understand that the changes have been deferred until a consultation process currently being conducted is concluded.

Technical changes were made to the provisions dealing with Islamic finance and short term leasing to improve the functioning of the existing legislation. In addition the technical liability to Irish tax has been removed in the case of certain non treaty recipients of Irish source interest which can be paid free of withholding taxes. This measure should improve the competitiveness of the Irish debt market.

Stamp Duty Changes

Apart from the stamp duty changes referred to above a number of other new measures have also been introduced. Only some of these measures had been flagged at Budget time.

Non-residential property

The Finance Bill introduces the significant change announced in the Budget in relation to stamp duty on acquisitions of non-residential property. The rate of stamp duty on non-residential property is reduced from a top rate of 6% (on transfers exceeding €80k) to a flat rate of 2%.

This new 2% rate not only applies to transfers of commercial & industrial land and buildings, but also to transfers of business assets such as goodwill, debtors, contracts, etc. The new rate also applies to premiums paid on leases of commercial buildings.

The 2% rate applies to instruments (e.g. deed of conveyance / lease for immovable property, asset purchase

agreement for business assets) executed on or after 7 December 2011. Where the new flat rate would give rise to a higher stamp duty charge than the previous rate (e.g. on transactions not exceeding €20k in value which would have been liable to 0% or 1% duty), stamp duty will be payable at the old rate provided certain conditions are met.

Exemption for mergers of companies

The Finance Bill introduces an exemption from stamp duty for any instrument made for the purposes of transferring assets pursuant to:

- 1 A merger within the meaning of the European Communities (Mergers and Divisions of Companies) Regulations 1987;
- 2 A cross-border merger within the meaning of the European Communities (Cross-Border Mergers) Regulations 2008; or
- 3 The formation of a Societas Europaea by the merger of 2 or more companies in accordance with Council Regulation (EC) No. 2157/2001.

Financial transactions

The Finance Bill also clarifies and extends the scope of a number of exemptions from Irish stamp duty applying to financial transactions. It clarifies that a 1% rate of stamp duty applies in respect of options over Irish shares and it extends the stamp duty exemption available in respect of a transfer of shares/securities of foreign companies to cover a wider range of foreign legal entities.

Pension business

The Finance Bill provides for significant exemptions from Irish stamp duty in respect

of transactions involving an in-specie transfer of assets belonging to pension schemes and charities. Because of the range of products offered, transfers of pension fund/charity assets can frequently occur and can involve:

- A transfer of investment assets from one institution to another institution;
- The transfer of assets from a unit trust in one institution to either a segregated fund or a similar unit trust in the same or another institution;
- A transfer of assets from a corporate fund in one institution to either a similar corporate fund in the same or another institution; and
- The transfer of assets from a life company to a related or unrelated financial institution, which may hold the assets either as a segregated asset or as an asset in a unit trust or in a life company.

Such transactions will be exempt from the charge to Irish stamp duty with effect from 8 February 2012.

Technical amendments have been included in the Finance Bill which empower the Revenue Commissioners to make assessments where an accountable person does not pay the pension schemes levy.

Move to self-assessment

The Finance Bill contains detailed changes to the stamp duty legislation in order to move stamp duty to a self-assessment basis. The main change will be the removal of the obligation to submit certain documents to the Revenue Commissioners for “adjudication”. It is currently necessary to submit documents for adjudication where certain reliefs or exemptions are being claimed or where

instruments operate as gifts. The removal of this obligation should speed up the stamping of instruments and reduce the administrative burden for taxpayers.

Many of the other proposed changes are aimed at bringing the administration of the stamp duty system in line with other taxes.

This new system of self-assessment and related legislative changes are subject to a Ministerial Order and will only apply to instruments executed on or after the commencement date specified in that Order.

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This booklet is intended to provide a general guide only to the subject matter and is necessarily in a condensed form. It should not be regarded as a basis for ascertaining the liability to tax in specific circumstances. Professional advice should always be taken before acting on any information in the booklet.

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